

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

09	LEROY CARR,)	
)	CASE NO. C11-0553-RSM-MAT
10	Petitioner,)	(CR07-333-RSM)
)	
11	v.)	
)	
12	UNITED STATES OF AMERICA,)	ORDER RE: PENDING MOTIONS
)	
13	Respondent.)	
)	

Petitioner, proceeding *pro se* and *in forma pauperis*, filed a supplemental 28 U.S.C. § 2255 memorandum and motion to conduct an evidentiary hearing (Dkt. 6) and a motion to vacate the referral of jurisdiction to a magistrate judge (Dkt. 9). Now, having considered petitioner's motions, the Court does hereby find and ORDER:

(1) The Court finds petitioner's request for an evidentiary hearing at this point premature. The Court will, however, consider the request for an evidentiary hearing upon consideration of respondent's answer, and of any subsequent briefing in this matter. As previously directed (*see* Dkt. 8 at 1), respondent shall, in the answer, state its position as to

01 whether an evidentiary hearing is necessary. Respondent shall further consider the content of
02 petitioner's supplemental memorandum in submitting its answer. Because consideration of
03 petitioner's request to conduct an evidentiary hearing is deferred, the noting date for
04 petitioner's motion (Dkt. 6) is hereby STRICKEN from the calendar.

05 (2) Petitioner, as noted above, also seeks to vacate the referral to the undersigned in
06 this matter. He objects to the referring of "jurisdiction" to a magistrate judge, stresses the
07 "importance of the proceedings and the constitutional ramifications," and states that he "does
08 not wish to waive the right to have a Article III judge preside over the § 2255 proceeding."
09 (*Id.*) However, this matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1),
10 Local Rules MJR 3 and 4, and Fed. R. Civ. P. 72. As such, while the undersigned may
11 determine certain non-dispositive pretrial matters and may issue proposed findings of fact and
12 recommendations for disposition on dispositive and certain other matters, the case remains
13 assigned to District Judge Martinez. This means, in particular, that Judge Martinez will render
14 the final decision on petitioner's request for an evidentiary hearing and for relief in this habeas
15 matter. Petitioner's motion to vacate the referral to a magistrate judge (Dkt. 9) is, accordingly,
16 DENIED.

17 (3) The Clerk shall direct copies of this Order to the parties and to Judge Martinez.

18 DATED this 16th day of May, 2011.

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21 Mary Alice Theiler
22 United States Magistrate Judge